Suruhanjaya Komunikasi dan Multimedia Malaysia
Malaysian Communications and Multimedia Commission

Ref No : MCMC/FCC/IDD-GM/G001(006)

October 7, 2005

Mr. Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
United States of America

Dear Sir

Subject: COMMENT ON NOTICE OF INQUIRY ON MODIFYING THE COMMISSION'S PROCESS TO AVERT HARM TO U.S. COMPETITION AND U.S. CUSTOMERS CAUSED BY ANTICOMPETITIVE CONDUCT (IB Docket No-05-254)

We would like to thank you for your invitation to respond to the Notice of Inquiry issued on August 15, 2005.

2. The MCMC welcomes the initiative by the Federal Communications Commission to undertake measures to avert harm to competition and safeguard the interest of US customers incorporating changes in existing policy and procedures.

3. We hope the initiative would enable pro-competitive environment for international telecommunication services and will promote the ability of customers to enjoy competitive prices for international calls.

4. We take this opportunity to reiterate our concern on high mobile termination rate charged by foreign carriers in certain countries. We hope the FCC would look into it and undertake appropriate measures to align them towards cost.

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5. We hereby submit our comment for your information as in **Attachment A.**

Thank you.

Yours sincerely,

BISTAMAM SIRU ABDUL RAHMAN
General Manager
Industry Development Division
Malaysian Communications and Multimedia Commission

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prr/ss

Attachment A

Malaysian Communications and Multimedia Commission

Comment on the Federal Communications Commission's Notice of Inquiry on Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct (IB Docket No-05-254)

1. General Remarks

1.1. The MCMC views the issues relating to anticompetitive aspects of international service require careful deliberation under the established rules and provisions by the Federal Communications Commission. From the NPRM on ISP Reform 2004, we understand that anticompetitive conduct by foreign carriers involve: (i) increase in settlement rates above the benchmarks; (ii) establishing rate floors, even if below benchmarks, that are previously negotiated rates; or (iii) threatening or carrying out circuit disruptions in order to achieve rate increase or changes to the terms and conditions of terminating agreements. In the light of the above understanding, the MCMC is pleased to offer comments on some of the specific issues as follows.

2. Specific Comments

2.1. We consider that there might be a possibility of engagement in anti competitive behaviour by carriers who still have monopoly in international telecommunications market in respective countries. In order to deal with such situations, some countries incorporate safeguards/ measures such as Parallel Accounting, Proportionate Returns Rule and publication of accounting rate data.

2.2. In a fully liberalised international telecommunications market, the possibility of engagement in anti competitive conduct is less evident as competitive opportunities are available for foreign carriers to negotiate termination rates and relevant terms and conditions for termination of international out bound traffic. However, foreign carriers with market power could have a possibility to misuse their market power which could result in substantial lessening of competition in a communications market.

2.3. While the MCMC appreciates the initiative of the Federal Communications Commission to undertake measures to avert harm to competition and safeguard the interest of US customers incorporating changes in existing policy and procedures, we are of the considered opinion that due regard should be given to the regulatory sovereignty of countries wherein National Regulatory Authorities are empowered to stipulate rules to deal with anticompetitive conduct of foreign carriers with market power to protect the interests of customers in their country.

2.4. In Malaysia, international telecommunication service, including fixed and mobile, operate under a fairly competitive market structure. Malaysia is an ISR approved route by the FCC since 2001 and is exempt from ISP policy[1]. In regard to competitiveness of international termination rates, it may be noted that Malaysian fixed and mobile termination rates[2] are one of the lowest in the world with mobile terminations rates at USD 0.0295 and fixed termination rate at USD 0.0250 with a ratio of mobile to fixed termination rate as 1.18 which is also one of the lowest in the world.

2.5. The quality of service to and from US route is maintained by Malaysian international carriers. Further, due to competition in Malaysia international telecommunications market, US carriers have multiple options to terminate their out bound calls in Malaysia via the choice of their preferred carrier.

2.6. Actions of carriers involved in circuit blocking purely with a view to achieve rate increase or changes to the terms and conditions of terminating agreements, are generally unacceptable. Notwithstanding the above, international carriers may exercise discretion in safeguarding their interests against foreign carriers in some circumstances e.g. those who have been delinquent in their post settlement payment which, in our view doesn't constitute anticompetitive behaviour as defined.

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1 FCC 'ISP Reform International Settlement Rates' IB Docket No. 02-324 March 30, 2004

2 FCC NOI on 'Effects of Foreign Mobile Termination Rates on US customers' IB Docket No. 04-398 dated October 26, 2004

3. Procedural Issues

3.1. As regards to the procedural issues including timeframe for submission for ten days and seven days for replies, we are of the view that concerned parties would be in a better position to respond to these questions. However, the MCMC considers necessary that the FCC should maintain an appropriate balance between expeditious timeframes and need for sufficient opportunity and time to be provided to international carriers to respond for defence.

4. Universal Service Fund

4.1. We agree with the provision of Universal Service is referred in above Recommendation at Annexure E.6 which states as follows:

'Any Member State has the right to define the kind of Universal Service Obligation it wishes to maintain. However, such obligations should be administered in a transparent , non-discriminatory and competitively neutral way which is not more burdensome than necessary for the kind of universal service defined by the Member'.

4.2. Further E 5.2 of the above Recommendation states that developing countries may give consideration to terminating incoming calls at their own cost orientated rate without requiring reciprocal treatment. However, such consideration would be voluntary and based on bilateral agreement.

4.3. Based on above, the MCMC considers that the implementation of universal service is primarily a national matter and is to be decided by the relevant country.

5. Concluding Remarks

5.1. The MCMC appreciates the transparent and consultative approach adopted by the Federal Communications Commission in protecting the US customers from the harms resulting from anti competitive conduct. We would like to take this opportunity to remind you our previous submission to FCC NOI on Foreign Mobile Termination Rates wherein we expressed our concern on unreasonably high mobile termination rates charged by foreign carriers in certain countries which still remain an important issue to be addressed. We hope that the FCC would look into the rationale for maintaining unreasonably high mobile termination rates in those countries and undertake appropriate measures to align them towards cost.

5.2. Finally, we hope that initiatives by the FCC would translate into lower international calling prices not only for US customers but also for customers of other countries.

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